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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2012-7*

13 **BRANDY DAWN FRENCH**
1885 California Street, #17
Mountain View, CA 94041
14 **Registered Nurse License No. 686268**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about August 11, 2006, the Board of Registered Nursing issued Registered
23 Nurse License Number 686268 to Brandy Dawn French (Respondent). The Registered Nurse
24 License expired on September 30, 2008, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
8 subdivision (b), the Board may renew an expired license at any time within eight years after the
9 expiration.

10 6. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
11 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
12 action during the period within which the license may be renewed, restored, reissued or
13 reinstated.

14 STATUTORY PROVISIONS

15 7. Section 2761 of the Code states:

16 “The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 ...

20 “(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
21 against a health care professional license or certificate by another state or territory of the United
22 States, by any other government agency, or by another California health care professional
23 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
24 action.”

25 COST RECOVERY

26 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE
4 (Unprofessional Conduct – Out of State Discipline)
5 (Bus. & Prof. Code § 2761, subd. (a)(4))

6 9. Respondent has subjected her registered nurse license to disciplinary action under
7 Code section 2761, subdivision (a)(4), in that on or about May 28, 2007, in a disciplinary action
8 before the Board of Nurse Examiners for the State of Texas (Texas Board), the Texas Board
9 entered an Agreed Order ordering that Respondent comply with various conditions for as long it
10 took for her to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN).
11 The Agreed Order required Respondent to: (1) within 45 days of entry of the Agreed Order, apply
12 to and be accepted into the TPAPN; (2) upon acceptance into TPAPN, waive confidentiality and
13 provide a copy of the executed TPAPN contract to the Texas Board; (3) comply with all
14 requirements of the TPAPN contract during its term; (4) cause the TPAPN to notify the Texas
15 Board of any violation of the contract; and (5) not work outside of the State of Texas pursuant to
16 a multistate licensure privilege without the written permission of the Texas Board and the nursing
17 board of the party state where Respondent wishes to work. The Agreed Order also provided that
18 should Respondent be convicted of or receive a deferred order for the underlying conduct
19 supporting the Texas Board's disciplinary action, such judicial action would result in further
20 disciplinary action by the Texas Board, including revocation of her license to practice
21 professional nursing. Furthermore, if Respondent failed to comply with the Agreed Order or the
22 terms of the participation agreement with TPAPN, such non-compliance would result in further
23 disciplinary action by the Texas Board, including revocation of her license to practice
24 professional nursing.

25 10. The underlying conduct supporting the Texas Board's disciplinary action is that on or
26 about March 14, 2006, while employed as a registered nurse by Midland Memorial Hospital in
27 Midland, Texas, Respondent engaged in the intemperate use of Methamphetamines. Specifically,
28 Respondent tested positive for Methamphetamines following a drug screen. The Texas Board

1 concluded that the use of Methamphetamines by a registered nurse, while subject to call or duty,
2 could impair the nurse's ability to recognize subtle signs, symptoms, or changes in a patient's
3 condition, and could impair the nurse's ability to make rational, accurate, and appropriate
4 assessments, judgments, and decisions regarding patient care, thereby placing patients in potential
5 danger. Furthermore, on or about March 24, 2006, Respondent was arrested by the Arlington
6 Police Department for "Possession of a Controlled Substance," a second degree felony, and
7 "Theft of \$1,500.00 to 20,000.00," a felony.

8 11. On or about November 10, 2006, Troy Martinez, Psy.D., performed a forensic
9 psychological evaluation on Respondent, which included a chemical dependency component as
10 well as a polygraph examination. The results of the evaluation indicated that Respondent had a
11 high probability of having a substance abuse disorder. During her evaluation, Respondent
12 acknowledged a history of chaotic intimate relationships that included regular consumption of
13 Methamphetamines and various other illicit drugs. Dr. Martinez strongly recommended that
14 Respondent participate in an extended, intensive substance abuse treatment program. In addition,
15 Dr. Martinez recommended that Respondent participate in a course of individualized
16 psychotherapy. Dr. Martinez anticipated that Respondent would be capable of conducting herself
17 in accordance with the requirements of the Board and of consistently behaving in accordance with
18 the minimal standards set by the Board.

19 12. The Texas Board found that there were serious risks to the public's health and safety
20 as a result of Respondent's impaired nursing care due to her intemperate use of controlled
21 substances or chemical dependency. The Board further determined that Respondent's compliance
22 with the terms of a Texas Board-approved peer assistance program would be sufficient to protect
23 patients and the public.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Out of State Discipline)
(Bus. & Prof. Code § 2761, subd. (a)(4))

13. Complainant hereby realleges the allegations contained in paragraphs 9 through 12 above, and incorporates them as if fully set forth.

14. Respondent has subjected her registered nurse license to disciplinary action under Code section 2761, subdivision (a)(4), in that on or about June 10, 2008, in a disciplinary action before the Texas Board, the Texas Board entered an Agreed Order (Order) suspending Respondent's registered nurse license until such time as she successfully completes a treatment program approved by the Texas Board. The Order further required Respondent to provide documentation of her successful completion of the program to the Texas Board and to achieve 12 consecutive months of sobriety. Any relapse prior to the completion of the 12 consecutive months of sobriety would result in an extension of the suspension of her license, until she achieved 12 consecutive months of sobriety and additional treatment. The Order provided that upon verification of successful completion of the approved treatment program and 12 consecutive months of sobriety, Respondent's suspension would be stayed and Respondent would be placed on probation for three years under various terms and conditions. The terms and conditions of Respondent's probation required Respondent to: (1) comply in all respects with the Nursing Practice Act, the Rules and Regulations Relating to nurse Education, Licensure, and Practice, and the Texas Board's Order; (2) pay all re-registration fees; (3) within one year of the suspension being stayed, successfully complete a Texas Board-approved course in Texas nursing jurisprudence and ethics for a minimum of six contact hours; and (4) pay a monetary fine.

15. The Order further provided that if Respondent's suspension were stayed and she practiced as a registered nurse in the State of Texas under the terms and conditions of her three year probation, she would be required to: (1) provide direct patient care and practice in a hospital, nursing home, or other clinical setting; (2) work in such setting for a minimum of 64 hours-per-month; (3) notify all future employers of the Order and the probation conditions on her license; (4) cause each present and future employer in nursing to submit the Notification of Employment

1 form; (5) for the first year of employment as a nurse under the Order, work under the direct
2 supervision of a registered nurse who is immediately available to provide assistance and
3 intervention; (6) work only on regularly assigned, identified, and pre-determined units; (7) not be
4 employed by nurse registry, temporary nurse employment agency, hospice, or home health
5 agency; (8) not be self-employed, contract for services, or be employed by multiple employers;
6 (9) after the first year of her probation period, work under the supervision of a registered nurse
7 who is on the premises and who is readily available to provide assistance and intervention if
8 necessary; (10) for the first year of employment as a nurse under the Order, not work on the night
9 shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit
10 other than the identified, pre-determined unit(s) to which she is regularly assigned; (11) for the
11 first year of employment as a nurse under the Order, not practice as a nurse in any critical care
12 area; (12) for the first year of employment as a nurse under the Order, not administer or have any
13 contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates;
14 (13) cause each employer to submit quarterly reports regarding Respondent's capability to
15 practice nursing; (14) abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram,
16 or other synthetic opiates and controlled substances, except as prescribed by a licensed
17 practitioner for a legitimate purpose; (15) submit to an evaluation by a Texas Board-approved
18 physician specializing in pain management or psychiatry if a prescription for a controlled
19 substance were required for a period of two weeks or longer; (16) submit to random, periodic
20 screens for controlled substances, alcohol, and other drugs; and (17) attend at least two support
21 group meetings each week, one of which shall be for substance abuse.

22 16. The underlying conduct supporting the Texas Board's disciplinary action is that on or
23 about May 28, 2007, the Texas Board entered the Agreed Order referenced above in paragraphs 9
24 through 12, which required Respondent to participate in and successfully complete the TPAPN.
25 On or about December 13, 2007, while employed as a registered nurse by Medical Center
26 Hospital in Odessa, Texas, Respondent engaged in the intemperate use of alcohol. Specifically,
27 Respondent tested positive for alcohol following a drug screen. The Texas Board concluded that
28 the use of alcohol by a registered nurse, when subject to call or duty, could impair the nurse's

1 ability to make rational, accurate, and appropriate assessments, judgments, and decisions
2 regarding patient care, thereby placing patients in potential danger. Furthermore, Respondent
3 failed to comply with the Texas Board's May 28, 2007 Agreed Order in that by engaging in the
4 intemperate use of alcohol she failed to comply with the TPAPN contract. The May 28, 2007
5 Agreed Order required Respondent to comply with all requirements of the TPAPN contract
6 during its term. The Texas Board found that there were serious risks to the public's health and
7 safety as a result of impaired nursing care due to Respondent's intemperate use of controlled
8 substances or chemical dependency.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
11 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 12 1. Revoking or suspending Registered Nurse License Number 686268, issued to Brandy
13 Dawn French;
- 14 2. Ordering Brandy Dawn French to pay the Board of Registered Nursing the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18
19

20 DATED: July 8, 2011

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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